



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,732	12/26/2001	Frank E. Oetlinger	1548-00036	3842

23598 7590 10/08/2004

BOYLE FREDRICKSON NEWHOLM STEIN & GRATZ, S.C.
250 E. WISCONSIN AVENUE
SUITE 1030
MILWAUKEE, WI 53202

EXAMINER

LOPEZ, MICHELLE

ART UNIT PAPER NUMBER

3721

DATE MAILED: 10/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/035,732	Applicant(s) <i>OF</i> OETLINGER, FRANK E.	
	Examiner Michelle Lopez	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 16-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 16-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the amendment filed on September 10, 2004.
2. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action filed on July 27, 2004 is withdrawn.
3. The affidavit under 37 CFR 1.132 filed April 26, 2004 is sufficient to overcome the rejection of claims 1-3 and 16-23 based upon that it establishes reduction to practice of the invention prior to the effective filing date of the Meyers et al. patent. Under MPEP 715.07(a), diligence need not be shown because diligence is not required after reduction to practice. In view of the declaration, it is believed that applicant has established invention of the subject matter of claims of the pending invention prior to the effective filing date of the Myers et al. patent.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

4. Claims 1-3 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-3 of copending Application No. 10/160856. This is a

Art Unit: 3721

provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 16-20, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (US 707,803). Smith'803 discloses a support member "15" having an upper surface which defines a substantially horizontal plane; a presser "14" movable vertically in a plane perpendicular to said horizontal plane between an extended position spaced from said support member "14" beneath said horizontal plane (see Fig. 1) and a second retracted position (see Fig. 2); mounting means via a linkage assembly "5,6" interconnecting said presser "14" to said support member "15"; an elongate rail "3" extending parallel to the horizontal plane; biasing means via "17" for biasing the linkage assembly and presser toward an extended position (see col. 2; lines 100-102); a slider via "8" mounted for horizontal sliding movement on said presser "14", and the lower end of the arm "5" is pivotally mounted to the slider "8".

With regards to claim 16, Smith'803 discloses an arm via "5" interconnecting said support "15" and presser "14", a lower end at "8" mounted to said presser that simultaneously pivots and moves horizontally with respect to said support "15", an upper

Art Unit: 3721

end pivotally mounted to said support at "5"; a link "6" interconnecting said arm "5" and presser "14" via "7" having an upper end pivotally mounted to said arm "5" at the vicinity of "7" and a lower end pivotally mounted to said presser "14" at "6".

With regards to claims 17 and 18, it is deemed that the pivotal mounting "7" of the link "6" is located at the midpoint between the upper and lower pivotal mountings at "5", "8" of the arm "5", and it is located in a plane extending through the upper and lower pivotal mountings at "5", "8" of the arm "5".

With regards to claim 19, as can be seen in Fig. 2, the distances between the pivotal mounting of the upper end of the link at "7" with the pivotal mounting of the lower end of the link at "6"; and with the pivotal mounting of the upper end of said arm at "5"; and with the pivotal mounting of the lower end of the arm at "8", are all equal.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith' 803 in view of Finkbeiner (US 6,213,451). Smith'803 discloses the invention substantially as claimed except for a longitudinally extending upwardly opening channel, wherein the slider is disposed. However, Finkbeiner'451 teaches a base "13" with a longitudinally extending upwardly opening channel as a u-shaped channel (see col. 7; lines 6-9) and a slider "51" disposed within the channel for the purpose of pivotally

Art Unit: 3721

mounting a linkage assembly "57" that moves horizontally with respects to the base "13".

In view of Finkbeiner'451, it would have been obvious to one having ordinary skills in the art to have provided Smith's invention with a longitudinally extending upwardly opening channel on the presser "14" in order to disposed the slider within the channel and pivotally mounting the linkage assembly horizontally moveable with respects to the presser "14".

With regards to claim 22, Smith'803 as modified by Finkbeiner'451 does not disclose a spring disposed within the channel acting against the slider. However, it would have been obvious to one having ordinary skill in the art at the invention was made to have provided a spring as a biasing mechanism in order to acts against the slider and maintains the presser toward an extended position, since it is old and well known in the art to have provided a resilient element or a spring as a biasing mechanism and it appears that Smith'803 would perform the same function of maintains the presser toward an extended position with Smith's biasing mechanism via "17".

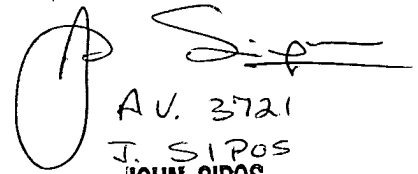
Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Lopez whose telephone number is 703-305-8205. The examiner can normally be reached on Monday - Thursday: 8:00 am - 6:00 pm.

Art Unit: 3721

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ML


AU. 3721
J. SIPOS
JOHN SIPOS
PRIMARY EXAMINER